IN THE UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF GEORGIA ALBANY DIVISION

LVNV FUNDING LLC ASSIGNEE OF GEMB/WAL-MART,	COURT FILE NO.:
Plaintiff,	
V.	NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441(c)
WALLACE LEWIS,	(FEDERAL QUESTION)
Defendant,	
And	
WALLACE LEWIS,	
Third Party Plaintiff,	
v.	
NORTHLAND GROUP INC.,	
Third Party Defendant.	

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant Northland Group Inc. ("Northland") hereby removes to this Court the state court action described below.

1. On or about July 27, 2009, Wallace Lewis ("Lewis"), Defentant/Third Party Plaintiff filed his Answer, Defenses, Counterclaims with Third Party Complaint in Crisp County Superior Court, State of Georgia, entitled *LVNV Funding LLC Assignee of GEMB/Wal-Mart* and

assigned Court File No. 09v-345. A copy of the Summons and Answer, Defenses, Counterclaims with Third Party Complaint is attached and marked as Exhibit "A".

- 2. This action is a civil action of which this Honorable Court has original jurisdiction under 28 U.S.C. § 1331, and is one which may be removed to this Court by Northland pursuant to 28 U.S.C. § 1441(b) in that it presents a federal question under 15 U.S.C. § 1692 *et seq.*, the Fair Debt Collection Practices Act. Moreover, under 28 U.S.C. § 1441(c), Lewis' claims against Northland present a separate and independent claim or cause of action than the matter originally commenced against Lewis by LVNV Funding LLC. *See Bd. of Regents of the Univ. of Tex. Sys. v. Walker*, 142 F.3d 813, 816 (5th Cir.1998) (holding that "a third-party indemnity defendant may remove a case to federal court pursuant to § 1441(c)"); *Florida Health Science Center, Inc. v. Rock*, 2006 WL 3201873 (M.D.Fla.2006) (allowing third party defendants to remove action to federal court based on third party plaintiff's claim third party defendants violated federal ERISA statute); *Hayduk v. United Parcel Service, Inc.*, 930 F.Supp. 584, 589, 593 (S.D.Fla.1996); *Carl Heck Engineers, Inc. v. Lafourche Parish Police Jury*, 622 F.2d 133 (5th Cir.1980).
 - 3. Northland was served on August 24, 2009. This removal is timely.
- 4. Attached as Exhibit B is a copy of the Suit on Account, originally filed on June 25, 2009.
- 5. As required by 28 U.S.C. § 1446(d), Northland will give notice of the filing of this notice to Plaintiff and to the clerk of the Crisp County Superior Court, State of Georgia, where the action is currently pending.

WHEREFORE, Northland respectfully requests that the above captioned matter currently pending in the Crisp County Superior Court, State of Georgia, be removed to this Honorable Court.

Dated: September 22, 2009.

BEDARD LAW GROUP, PC

By: <u>/s/John H. Bedard, Jr.</u>

John H. Bedard, Jr., Esq. Georgia Bar No.: 043473

2810 Peachtree Industrial Blvd., Suite D

Duluth, Georgia 30097

Phone: 678-253-1871ext. 244

Fax: 678-253-1873

jbedard@bedardlawgroup.com

Counsel for Northland Group, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2009, I served a true and correct copy of the enclosed Notice of Removal upon to the following counsel of record by depositing same in the United States Mail with sufficient postage affixed thereto:

David Addleton UAW Legal Services Plan 2200 Century Parkway, Suite 950 Atlanta, GA 30345

/s/John H. Bedard, Jr.
John H. Bedard, Jr.
Ga Bar 043473

EXHIBIT 66A39

CRISP COUNTY SUPERIOR COURT STATE OF GEORGIA

FILED IN OFFICE

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(Jenukogue), Clerk CRISP SUPERIOR COURT

LVNV FUNDING LLC ASSIGNEE OF GEMB/WAL-MART

Plaintiff,

CIVIL ACTION FILE

vs.

NO. 09V-345

WALLACE LEWIS,

Defendant.

WALLACE LEWIS,

Third party plaintiff,

VS.

NORTHLAND GROUP INC.,

Third party defendant

SUMMONS

TO THE ABOVE NAMED THIRD PARTY DEFENDANT

You are herby summoned and required to file with the Clerk of said Court and serve upon the third party Plaintiff's attorney, whose name and address is:

David Addleton Attorney at Law UAW Legal Services Plan 2200 Century Parkway, Suite 950 Atlanta, GA 30345 404.248.0808

An Answer to the third party Complaint which is herewith served upon you within 30 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third party Complaint

This the 27 day of July

.2009

CLERK OF SUPERIOR COURT

Deputy Clerk

CRISP COUNTY SUPERIOR COURT STATE OF GEORGIA

LVNV FUNDING LLC ASSIGNEE OF GEMB/	FILED IN OFFICE
WAL-MART,) plaintiff,)	JUL 27 2009 QOM Jean Wagne J., Clerk CRISP SUPERIOR COURT
- v -	
WALLACE LEWIS,	
defendant.)	CIVIL ACTION FILE NUMBER 2009CV345
WALLACE LEWIS,	091-345
third party plaintiff,)	
- v -	
NORTHLAND GROUP INC.,	
third party defendant.	

ANSWER, DEFENSES, COUNTERCLAIMS WITH THIRD PARTY COMPLAINT

COMES NOW your defendant by counsel and for his answer and defenses to the complaint unjustly lodged against him, for his counterclaims against the plaintiff herein, and for his third party complaint, shows as follows:

INTRODUCTION

1.

The United States Congress found abundant evidence of abusive,

deceptive, and unfair debt collection practices by many debt collectors and determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

2

Congress drafted the Fair Debt Collection Practices Act, 15 USC 1692 et seq. (hereafter "FDCPA") with the goal to eliminate abusive collection practices debt collectors use and to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

3.

In 1st Nationwide Collection Agency, Inc. v. Werner, 288 Ga.App. 457, 654 S.E.2d 428 (2007), the Georgia Court of Appeals found that a violation of the FDCPA is, ipso facto, a violation of Georgia's Fair Business Practices Act, ("GaFBPA," OCGA § 10-1-390 et seq.). Based on similar reasoning, Georgia's Unfair or Deceptive Practices Toward the Elderly Act ("UDPTEA," OCGA § 10-1-850 et seq.) would apply to enhance damages if the alleged debtor is aged 60 or older. Thus, Georgia promotes consistent state action to protect consumers from unfair debt collection practices and provides special protection for elderly consumers.

4.

Plaintiff LVNV Funding LLC is a debt collector under the FDCPA and has sued defendant, a natural person, a consumer under the FDCPA, and an elderly person under UDPTEA, on an alleged account; plaintiff employed Northland Group Inc. to communicate on its behalf as debt collector under the FDCPA.

ANSWER & DEFENSES

5.

Defendant admits the allegations described or contained in numbered paragraph one of the complaint.

6.

Defendant denies the allegations described or contained in numbered paragraph two of the complaint and demands specific proof thereof by competent evidence.

7.

Defendant denies the allegations described or contained in numbered paragraph three of the complaint and demands specific proof thereof by competent evidence.

8.

Defendant denies the allegations described or contained in the balance of the complaint and not otherwise expressly and specifically admitted above, and demands specific proof thereof by competent evidence.

9.

Defendant denies the plaintiff is entitled to relief sought and demands specific proof thereof by competent evidence and legal authority.

10.

The claim is barred by the applicable statute of limitations.

11.

The claim is barred for want of notice of assignment by O.C.G.A. § 44-12-22.

COUNTERCLAIMS WITH THIRD PARTY COMPLAINT

12.

Defendant brings his counterclaims and third party complaint for damages for plaintiff's and Northland Group Inc.'s violations of the FDCPA and GaFBPA which prohibit the debt collectors from engaging in abusive, deceptive, and unfair practices and of the UDPTEA which prohibit debt collectors from engaging in such practices against the elderly.

13.

Jurisdiction and venue in this court arises under 15 USC § 1692k(d), 28 USC § 1337, and under GaFBPA and UDPTEA; venue in this court is proper in that the plaintiff filed its action here against the defendant, and in that plaintiff and Northland Group Inc. transacted its business here, and because the

conduct complained of occurred here.

14.

Plaintiff misrepresented to defendant the amount, character, or legal status of the debt to plaintiff.

15.

Northland Group Inc. misrepresented to defendant the amount, character, or legal status of the debt.

16.

Plaintiff and Northland Group Inc. failed to timely notify defendant of plaintiff's acquisition of any interest in the alleged debt.

17.

Neither plaintiff nor Northaland Groupd Inc. notified defendant of a right to dispute the alleged debt and demand verification thereof.

18.

Neither plaintiff nor Northland Group Inc. afforded defendant verification of the alleged debt within thirty days of defendant's demand therefor.

19.

The Northland Group Inc. is a profit debt collection business organized under the laws of Minnesota, formerly known as "Northland Collection Service, Inc." and "The Northland Group, Inc.," and it may be served through its principal officer by mail service addressed to John M. Johnson, Chief Executive

Officer, 7831 GLENROY RD #350, Edina, Mn 55439; it conducted its debt collection business in Georgia by causing to be delivered to defendant herein certain communications attached to this complaint and labeled exhibits "A" and "B" which are incorporated into this numbered paragraph nineteen as if the same were fully set forth in it.

20.

Plaintiff and Northland Group Inc. intentionally performed or refrained from performing the acts herein above alleged with the purpose to coerce defendant to pay the alleged debt.

FIRST COUNTERCLAIM & THIRD PARTY COMPLAINT FOR RELIEF

21.

Defendant repeats and realleges and incorporates by reference numbered paragraphs one through twenty above.

22.

As a result of the aforementioned violations, and other violations, of the FDCPA plaintiff and Northland Group Inc. are each separately liable to defendant for declaratory judgment that plaintiff's conduct violated the FDCPA, plaintiff's actual damages, statutory damages in the amount of \$1,000, and costs and reasonable attorneys fees.

SECOND COUNTERCLAIM & THIRD PARTY COMPLAINT FOR RELIEF

23.

Defendant repeats and realleges and incorporates by reference all the foregoing numbered paragraphs.

24.

As a result of the aforementioned violations, and other violations, of the GaFBPA plaintiff and Northland Group Inc. are each separately liable for defendant's actual damages, statutory damages up to \$3,000 for each violation, and costs and reasonable attorneys fees.

THIRD COUNTERCLAIM & THIRD PARTY COMPLAINT FOR RELIEF

25.

Defendant repeats and realleges and incorporates by reference all the foregoing numbered paragraphs.

26.

As a result of the aforementioned misrepresentations intentionally made to an elderly person, plaintiff and Northland Group Inc., are each separately liable to defendant for statutory exemplary damages up to \$10,000 for each violation.

WHEREFORE defendant respectfully prays that judgment be entered against the plaintiff and, separately, against Northland Group Inc., and in favor

of defendant, as follows:

- A. Actual damages.
- B. Statutory damages under the FDCPA.
- C. Statutory damages under the GaFBPA.
- D. Statutory damages under the UDPTEA.
- E. Costs and reasonable attorneys fees.
- F. For such other and further legal and equitable relief as may be just and proper.

Respectfully submitted this 24th day of July 2009 by:

UAW LEGAL SERVICES PLANS

by:

David F. Addleton, Staff Attorney

Attorney for Defendant

Georgia Bar Number 005050

2200 Century Parkway Suite 950 Atlanta Georgia 30345 404.248.0808, voice 404.248.1398, fax

EXHIBIT "A"



Northland Group Inc.

Toli Free: 866-380-8783 NGI@northlandgroup.com Hours of Operation: M-Th 7-9, F 7-7, Sat 8-12 CT July 3, 2008

Northland Account #: F23823660 Current Balance Due: \$4,760.93 Settlement Offer: \$3,380.26 Current Creditor: LVNV Funding LLC Frevious Creditor: Ge Capital/Walmart

Original Account #: 6011310009021236

Wallace Lewis (F23823660-07/03x33) 611 26Th Ave Cordele, GA 31015 hullandliftmooth hilling

Dear Wallace Lewis.

Ltdb 30 8459940700_0

P.O. Box 390846 Edina, MN 55439 Mail Code 5G53

The current creditor, LVNV Funding LLC, will allow you to settle your account for \$3,380.26 in 3 payments starting on 07/24/08. The payments can be no more than 30 days apart. Once all three payments have been paid to our office on time, we will consider this account satisfied and closed, and a release letter will be sent. Please send in the payments along with a payment stub to the address below.

As of the date of this letter, the current balance on your account is \$4,760.93. Because of interest that may vary from day to day, the balance due on the day you pay may be greater. This does not affect the above settlement offer.

Sincerely.

Northland Group, Inc. 866-380-8783

If you would like to pay your bill without talking to a representative, please log onto www.payments2northland.com.

You can also communicate with the Northland Group, Inc. through the payment website.

If you wish to talk to a representative please call Northland Group, Inc. at this toll-free number 866-380-8783.

When you provide a check as dayment, you authorize us either to use information from your check to make a checking fund transfer from your account or to process the payment as a check transaction. ""When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution."

This is an attempt to colect a debt by a debt collection and any information obtained will be used for that purpose.

This communication is sent to you by Northland Group, Inc., a debt collector and a member of ACA International.

This collection agency is licensed by the Minnesota Department of Commerce.



1 of 3

Current Creditor: LVNV Funding LLC Original Account #: 60 1131c009021236 Mail Payment to: Northland Group, Inc. P. 9. 6xx 330346 Edina, MN 55439

Payment Amount: \$1,126,75 Due Date: 07/24/08

Detach coupon and mail with payment

2 of 3

Current Creditor: LWVV Funding LLC Original Account #: 601131000907.1236 Mail Payment to: Northland Group, Inc. P.G. Box 330846 Edina, MN 55429

Payment Amount: \$1,126.75 Due Date: 30 days from 1st payment

Detach coupon and mail with payment

3 of 3

Current Creditor: LVNV Funding LLC Original Account #: 60113 (2009021236 Mail Payment to: Northland Group, Inc. P.O. 80x 390946 Edina, MN 55439

Payment Amount: \$1,126.76 Due Date: 30 days from 2nd payment

Detach coupon and mail with payment

EXHIBIT "B"



Northland Group Inc.

PAYMENT **ADDRESS** P.O. Box 390846 Edina, MN 55439 NGI @northlandgroup.com Hours M-Th 7-9, F 7-7, Sat 8-5 CT

PHONE NUMBER (866) 699-2654

Account number: F23823660

CURRENT BALANCE

\$4,905.27

SETTLEMENT DUE

\$3,482,74

DUE DATE

See Coupons Below

September 16, 2008

Wallace Lewis (F23823660-09/16x283) 611 26Th Ave Cordele, GA 31015 Adlantillandblakkal

CURRENT CREDITOR

LVNV Funding LLC

6011310009021236

The current creditor, LVNV Funding LLC, has authorized a settlement on the above referenced account. Your account will be considered settled if you pay the settlement of \$3,482.74. Please make payments by due dates below. Upon receipt and clearance of \$3,482.74, a release letter will be issued confirming the account is satisfied and

As of the date of this letter, the current balance on your account is \$4,905.27. Because of interest that may vary from day to day, the balance due on the day you pay may be greater. This does not affect the above settlement offer.

PAY YOUR ACCOUNT BY ONE OF THE FOLLOWING:

Pay online: Log onto https://www.payments2northland.com.

Pay by mail: Send payments to PO Box 390846, Edina, MN 55439.

Pay by phone: Please call Northland Group, Inc. toll-free at (866) 699-2654. We offer check by phone, Western Union and Money Gram.

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. "When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution." This collection agency is ficensed by the Minnesota Department of Commerce. This is an attempt to collect a debt onlector and any information obtained will be used for that purpose. debt by a debt collector and any information obtained will be used for that purpose.

PAYMENT COUPON PLEASE INCLUDE WITH PAYMENT

Current Creditor: LVNV Funding LLC Northland Account #: F23823660 Mail Payment to: Northland Group, Inc. P.O. Box 390846 Edina, MN 55439

Payment Amount: \$1,160.91

Due Date: 10/07/08

PAYMENT COUPON PLEASE INCLUDE WITH PAYMENT

Current Creditor: LVNV Funding LLC Northland Account #: F23823660 Mail Payment to: Northland Group, Inc. P.O. Box 390846 Edina; MN 55439

Payment Amount: \$1,160.91

Due Date: 30 days from 1st payment

PAYMENT COUPON PLEASE INCLUDE WITH PAYMENT

Current Creditor: LVNV Funding LLC Northland Account #: F23823660 Mail Payment to: Northland Group, Inc. P.O. Box 390846 Edina, MN 55439

Payment Amount; \$1,160,92

Due Date: 30 days from 2nd payment

M283-223 P3251/3P10_2

CERTIFICATE OF SERVICE

The undersigned certifies he caused to be served upon counsel of record for the plaintiff a copy, true and correct in all relevant respects, of the within and foregoing Answer, Defenses, Counterclaims With Third Party Complaint, by causing the same to be placed with the United States Postal Service within a sealed envelope to which sufficient postage was affixed to assure delivery addressed as follows:

Dennis E. Henry Frederick J. Hanna & Associates, P.C. 1427 Roswell Road Marietta GA 30062

And that he will request issuance of a second original with a summons to be served upon the third party defendant herein by local sheriff's service or by mail service upon the chief executive officer located at the address alleged in the complaint.

This 24th day of July 2009.

David 6. Addleton

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Plaintiff
vs.

WALLACE LEWIS

Defendant

THE SUPERIOR COURT FOR THE COUNT OF CRISE STATE OF GEORGIA

FILED IN OFFICE

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CIVIL ACTION FILE
NO. OGN-345

SUIT ON ACCOUNT

Now comes the Plaintiff in the above-styled action and states its complaint as follows:

The Defendant, a resident of this county, is subject to the jurisdiction of this Court and can be served at his/her residence address of 611 E 26TH AVE, CORDELE GA 31015-2247.

The Defendant is indebted to Plaintiff in the amount of \$4,192.73 as principal and \$524.26 as interest.

The principal and interest are past due and Defendant refuses to pay.

WHEREFORE, Plaintiff demands Judgment against Defendant in the principal sum of \$4,192.73, interest of \$524.26 and court costs of \$105.00.

Dennis E. Henry Attorney for Plaintiff Georgia Bar #347675

Frederick J. Hanna & Associates, P.C.

1427 Roswell Road Marietta, GA 30062 (770) 988-9055

09088849